Supreme Court of the United States

OCTOBER TERM, 1960

REPLY BRIEF FOR PETITIONERS

IN THE

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OCTOBER TERM, 1960

No. 958

BANK VOOR HANDEL EN SCHEEPVAART, N.V., *et al.*,
Petitioners,

v.

ROBERT F. KENNEDY, Attorney General of the United States, as Successor to the Alien Property Custodian, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR PETITIONERS

Although respondents characterize (brief, p. 9) the issue here involved as "residual" and of no "substantial importance" because the World War II vesting program is twenty years old, the fact remains that the Trading With the Enemy Act is permanent legislation presently applicable in various parts of the world and continuously available for international emergencies. Determination of the issue by this Court is important for guidance in the continuing administration of the Act.

1. The issue is admittedly one of "first impression" (Resp. brief, p. 9), and is not controlled by *Swiss Insurance Co.* v. *Miller*, 267 U. S. 42 (Resp. brief, p. 6) which held, *inter alia*, that the termination of war does not auto-

matically entitle a corporation, concededly enemy by reason of its activities, to a return of vested property. The view that enemy status attributable solely to enemy occupation should disappear with the cessation of occupation is rejected by respondents (brief, p. 6) as a "shifting construction"; but petitioners' position is thoroughly consistent with the flexible interpretation of the statute approved by this Court when it held in *Clark* v. *Uebersee Finance Korporation*, 332 U. S. 480, that § 2 of the Act should be applied differently after the enactment of § 5(b) in 1941, in order to achieve a remedial result.

2. The committee report quoted on page 7 of respondents' brief embodying the language that "present law does not permit a return of the property of even these technical 'enemies'" does not say a word about § 9(a) or a judicial remedy, and refers, in its context, to matters involving administrative return.[1]

3. Although respondents refer to possible remedy in the Court of Claims (brief, pp. 4, 8), Congress has demonstrated its intent that claimants to vested property should not be relegated to a Court of Claims forum. Not only does the Act itself contain a "sole relief and remedy" provision (§ 7(c)), but at least twice since the end of World War II Congress has considered and rejected proposed legislation[2] in 1945 and 1946 which would substitute

1. Since there is no right to judicial review of the administrative determination of the Alien Property Custodian in our case (*Schilling* v. *Rogers*, 363 U. S. 666), this Court is hardly the place to protest the lack of "rational basis" for that determination, as respondents seem to think should be done (brief, p. 7).

2. H. R. 4840 (78th Cong. 2d Sess.) and H. R. 5084 (79th Cong. 1st Sess.). In explaining its own amendment to H. R. 5084 the Senate Committee on the Judiciary stated: "The bill as herein amended preserves in full these rights under 9(a) which the former foreign national, together with the United States citizen, has had for more than 25 years under the act." (Senate Rep. 1839, Committee on the Judiciary, 79th Cong. 2d Sess., 1946, p. 2.)

a Court of Claims remedy, for that provided by 70(a). In *Clark v. Uebersee Finanz-Korporation*, 332 F. S. 480, 487, this Court said "It is not easy for us to assume that Congress treated all nonenemy nations, including our recent allies, in such a harsh manner, leaving them only with such remedy as they might have under the Fifth Amendment."

Petitioners urge that this Court grant certiorari to settle an issue vital to protection of alien assets in the United States and to proper administration of alien property legislation.

Respectfully submitted.

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